LABOUR DEPARTMENT

The 17th November, 1994

No. 14/13/87-6Lab./873.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s The Haryana Co-op Sugar Mills Ltd., Rohtak *Versus* S/sh. Anand Singh, Mukhtiar Singh, Jai Singh, Dilbag Singh and Suresh Kumar.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

References No. 253 to 257 of 1987

Between

S/SHRI ANAND SINGH, MUKHTIAR SINGH, JAI SINGH, DILBAGH SINGH AND SURESH KUMAR ALL C/O SHRI SUNDER SINGH, GENERAL SECRETARY, DISTRICT C.I.T.U. COMMITTEE, ROHTAK, WORKMEN RESPECTIVELY

And

THE MANAGEMENT OF M/S THE HARYANA CO-OPERATIVE SUGAR MILLS LTD., ROHTAK

Present :

Shri R.C. Siwach, A.R. for the workman.

Shri M. Kaushal, A.R. for the management.

AWARD

In exercise of powers conferred by sub clause (c) of sub-section (1) of Section 10 of the Industrial Dispute, Act, 1947, the Governor of Haryana has referred the following disputes, between the parties, named above to this Court for adjudication ,--*vide* Labour Department Endstts. No. 43241-46, 43248-53, 43255-60, 43262-67 and 43269-74, dated. 3rd November, 1987 :--

> Whether the termination of services of S/Shri Anand Singh, Mukhtiar Singh, Jai Singh, Dilbagh Singh and Suresh Kumar is justified and in order ? If not, to what relief the are entitled ?

2. The workmen and the management were summoned. The workmen appeared and filed their claim statement that they had worked from 26th June, 1983 to 15th December, 1985 with the respondent mill, that no complaint was against them. But the respondent had refused to take them on duty on 15th December, 1985, despite the requests of many times but of no use. The management has not given them any notice and did not tell them any reason of retrenchment and the applicant has not got benefits of Section 25-F of the I.D. Act, hence this claim-petition filed that they be reinstated with continuity of service with full back wages.

3. Written statement filed by the management that respondent mill is a sugar industry and is manufacturing sugar. The industry is seasonal in nature on account of its working. Certain workers before terminated on account of their illegal acts in violation of the certified standing orders want to the Supreme Court. The Supreme Court considered the cases of strike and problem so effected the workers were asked to give a undertaking before reporting on duty and a lienient view was taken in that affair by the management. No back wages were ordered by the Hon'ble Supreme Court nor were paid to any of those applicants. The applicants was also given an offer to report for duty but they did not report for duty after 15th December, 1985 inspite of the offer given to them. The demand notices filed by the applicants was to be conciliated by the Labour-cum-Conciliation Officer, Rohtak. Specific offer was given before the conciliation Officer that if the workmen are intended to report for duty that they be directed to report duty but the applicants did not report for duty. The matter was again taken up by Shri Dharmender Nath, Joint Labour Commissioner-cum-Chief Conciliation Officer, Haryana, Chandigarh and the management had offered the applicants to join but they refused to report for duty. That the present cases are regarding the case of termination as stated where it is not case of termination as given above. The applicants was paid off on 24th March, 1985 and had to report for work 15th December, 1985. The applicants did not report. Since no termination was effected by the management but the applicants were repeatedly offered employment by the management, therefore, the references made by the Government regarding termination is pre-mature one. Hence prayer was made that reference may be awarded in favour of the respondent against the applicant holding that the reference is bad in law without jurisdiction and not tenable for reasons by way of back ground of the case. The applicants are gainfully employees since they did not turn for assuming employment on or after 15th December, 1985. Hence the references may be dismissed.

4. Replication was filed by the workmen. On the pleadings of the parties, the following issues were framed :--

1. As per terms of references ?
2. Whether references are bad in law ?
3. Whether the workmen abondoned the job ? OPR.
4. Whether the workmen have been gainfully employed ?
5. Relief ?

5. My findings on the above issues with reasons thereof are as under :--

Issue No. 1 :

6. The workmen have examined sever witness who are WW-1 Daya Kishan Time Keeper of the respondent, WW-2 Mukhtiar Singh, WW-3 Dilbagh Singh, WW-4 Suresh Kumar, WW-5 Jai Singh, WW-6 Anand Kumar all workmen and WW-7 is Shri Sunder Singh who deposed in support of the case of workmen thereafter evidence was closed. The management has examined Shri Suraj Mal as MW-1 and closed his evidence.

7. Two questions are involved in the references. Firstly was whether the workmen had worked for more than 240 days in the year or not. Second is whether they were terminated for services or they had abondoned the job or not.

8. Regarding first question the evidence of the workmen can be read in evidence and who deposed that they have worked in the respondent w.e.f. 1983 to 1985. The workmen have produced Daya Kishan, Time Keeper as WW-1 and who made the statement and produced Ex.W-1 the statement showing on days which the workmen had worked. Ex.W-1 is the statement showing that Anand Singh had been working from 1983 to 1985 like it all the workmen have been working from 1982 to 1985. Since all the workmen had been working during three years but I am see whether they had served the respondent factory for more than 240 days in a year or not. This fact that respondent factory is a seasonal factory and infact worked about for six months in a year hence the cases of the workmen whether they worked for about 120 days in the last year or not.

9. According to Ex.W-1 Anand Singh worked for 239 days in the year 1985, Mukhtiar Singh had worked for 238 days in the year 1985, Jai Singh worked for 94 days, Suresh Kumar had worked for 77 days and Dilbagh Singh had worked only for 39 days. All the workmen had been showing the working of whole the year. It means that they were working on the work which was to go for the whole year of 1985. Thus I am of view that the rule of 240 days in a year working shall be applicable in case of the applicants and not 120 days in a year.

10. Now the question raised by the learned A.R. for the management is that the management never terminated the services of any workman but the workmen had never reached the factory to do work and they adopted policy in reference to joining the duty. The management on the other hand made submission that the workmen had been going to the factory but the management never allowed to join the duty and the workmen were always still ready to work in the factory. The management is ready to take workmen on duty but management shall not paying the back wages. The learned A.R. for the workmen did not said anything regarding back wages, I am of the view that the A.R. for the workmen does not want that workmen are to work with the respondent without paying of back wages. To settle the above dispute I discussed the evidence lead by both the parties. The statement of Dilbagh Singh is referred in the context. Dilbagh Singh has made statement that he is not going to work with the management/ respondent without getting back wages and join the duty unless the whole back wages are paid to him. As I have already expressed my opinion that all the workmen are not ready to join the duty unless back wages are not paid the offer by the A.R. for the management was got accepted by the A.R. for the workman. He also made admission that he has not given in demand notice and said about only Ex.MX. He also made statement that he had never gone to work in the factory after giving letter Mark 'A'. He also made statement that he had never given in writing before Labour-cum-Conciliation Officer because the department had not given him in writing. He also made statement that in conciliation proceedings the management had not offered him duty. Dilbagh Singh has also made statement that he had never received any notice regarding joining duty and he was ready to join the duty and expressed his willingness in the conciliation proceedings and he is still

ready to join the duty. He also made statement that he had also filed Ex.WW-3/4. Dilbagh Singh also admitted that he had not worked in the factory from March, 1985 to October, 1985.

11. Suresh Kumar one of the workman who come into witness box as WW-4 made statement that he was appointed temporary as daily wager. He also admitted that his demand notice was rejected by the Labour Commissioner, Haryana, Chandigarh.

12. Shri Jai Singh, workman as WW-5 who has come into witness box made statement that after sending the letter Ex.WW-5/2 he had not sent any letter etc to the management. He admitted that during this period the management has asking him to join the duty. He also admitted that there was no watchman to check him to going inside the factory.

13. Shri Anand Singh who come into witness box as WW-6 and made statement that the management had never asked him to come and join the duty, he is ready to join the duty. He also admitted that he had also filed an appeal to the Labour Commissioner but the management had not refused to take him on duty and on his behalf Sunder Singh had appeared in the appeal before Labour Commissioner. He also not admitted that he was also on duty w.e.f. February, 1985 and he had never given letter on removal from duty on 18th December, 1985. He also made statement that he had never appeared before Joint Labour Commissioner at Sonepat but he had appeared before him at Rohtak. He also made statement that he is ready to go to join the duty without back wages.

14. The learned A.R. for the applicants made submission that when the applicants are sending registered letters,--*vide* Ex.WW-2/1, WW-3/1 and the management had refused to accept it as reported by the Postman in the back side to the envelope. 'It means that management has not taken back on work to the applicants. The learned A.R. for the management made submission that it not proved that the management who refused the registered notice have been done so by the employee of the management and it is not done so that M.D. or other officer of the management has refused the notices and thus the report of Postman on back side. However the point should be taken kept alive. The question regarding the conciliation proceedings is also involved in this case. The learned A.R. for the workmen/applicants made submission that no conciliation proceedings took place. The learned A.R. for the management made otherwise contention and Mark 'A' is the order passed by the Labour Commissioner, Haryana, Chandigarh to the effect that meeting was called at Sonepat on 13th April, 1987 and the management had issued seperate notice dated 17th April, 1987 and the management had admitted that they shall take the workmen in service, therefore, the demand notice was filed. It is shown that none of the workmen were present before the Joint Labour Commissioner at Sonepat. One of the applicant had admitted that they were not present before Labour Commissioner on 13th April, 1987 and they were present at Rohtak. The Deputy Labour Commissioner, Sonepat has sent a memo to Haryana Co-op. Sugar Mills Workers Union mentioning that they were informed to appear but had not replied and they were advised to end their strike and start to work in the industry/factory.

15. Copy of letter of the Labour Commissioner, Haryana to S/shri Hari Ram, Sumer Singh and 22 other workers of the demand notice and appeal filed by them and fixed a date on 13th July, 1987 at 12-30 P.M. 30 Bays Building in Sector-17 for conciliation. On 15th July, 1987 but the workers were present and the management was also present before the Labour Commissioner and he recorded the statements of before whom made statement that they had worked for more than 240 days in a year and they need to be reinstated in service by the management. Meeting were again called on 10th August, 1987 at 12-30 P.M. at Chandigarh but none of the parties appeared and the cases were filed. The statement of both the parties were recorded and the Joint Labour Commissioner had recorded and passed the order on 21st October, 1987 and mentioning the factum that the demand notice were to filed as there was no dispute between both the parties. Thereafter this demand notice were filed. Mark 'A' is the photostat copy of the registered letter sent by Haryana Coop. Sugar Mill to Labour Commissioner mentioning that the applicants before the Deputy Labour Commissioner "during his visit at Rohtak the parties were called for conciliation again". There is no hitch in taking the concerned workmen on duty. We made this offer at all the relevant times during the negotiation before the Labour Inspector and thereafter Labour Officer. The workmen were, however, adament to insist for payment of back wages reporting for duty. Mark 'C' is photostat copy of the notice issued by the respondent to 27 workers of the management and advised to report for duty. in Time Office. The management had produced the affidavit Ex.WW-3/1, WW-5/1, WW-4/1 to prove their contention that they were already willing to work with the management.

16. The only dispute remains whether the workmen are entitled to the back wages. The learned A.R. for the management has extended his support of the contention that workmen are ready to work in the factory and they be allowed to work. The learned A.R. for the management accepted the demand of their and made the submission that if the workmen asked to duty the respondent factory is to accept their service but without back wages.

17. In view from evidence discussed above I am of the view that the workmen were ready to join the duty but the management had never refused to allow to workmen to work. I think there is no hitch which restrained the workmen to join the duty.

18. The learned A.R. for the management made the submission that as the management had never terminated the services and there is no evidence by the workmen that their services were terminated, and for the submission the reliance was placed on reference between Panipat Coop. Sugar Mills Ltd., And Labour Court & Anr. cited in 1994 (2) LLJ, 404. The learned A.R. for the management also made the contention that any workmen are not proved to have worked for more than 240 days in a year hence are not entitled to the retrenchment compensation and for submission reliance was placed on 1994 (CLR) 607. The reference was made to Nankana Sahib Finance (P) Ltd. *Versus* Presiding Officer, Labour Court, Ludhiana & Anr. in Civil Writ Petition No. 5666 of 1982 holding that Labour Court bound as a fact that workman had absented from duty without permission or intimation and that he had gone to his village and the letter sent to him were received back undelivered. Still the Labour Court invalidated the termination of workman. Writ petition alleging that workman had abandoned his job and is gainfully employed in Nepal. The workman

neither filed counter nor came to defend the case inspite of service. It was held that in view of the fact that it has been clearly proved on the record of the case that the petitioner abandoned his service and was gainfully employed also where in fact no order of retrenchment was ever passed, the judgement relied upon the Labour Court reported as L. Robert D Souza *Versus* Executive Engineer, Southern Railway and another, 1982 FJR 144 was clearly not applicable to the facts of the case.

19. On the other hand the learned A.R. for the workmen brought to my notice the case law of D.K. Yadav *versus* M/s. J.M.A. Industries Ltd. cited in 1993(3) RSJ 696, holding that Retrenchment. Intended to cover any action of management which puts an end to the employment of an employer for any reason whatsoever. It is further held that the applellant in terms of Standing Order lost his lien on his appointment and so is not entitled to reinstatement, the workman has to give a satisfactory explanation to the Manager/Management of his reasons for absence orinability to return to the duty on expiry of the leave.

20. The reference was also made to case between Shri H.D. Singh and Reserve Bank of India and others cited in 1986 (1) LLJ, 127, holding that Industrial Disputes was raised by the employee which was referred for adjudication was raised by the bank stating that there was no termination of service and consequently S.2-A was not attracted. The bank further stated that the employee failed to inform the bank that he has passed the matriculation. Regarding violation of S.25-F the bank stated that the employees has not worked for 240 days in a year. It is further held that Striking off the name of the workman is clearly termination of his services and the dispute therefore falls within S.2-A of the Industrial Disputes Act.

21. It is of course true that the management had terminated the services of the applicants they are entitled to back wages also but from the factors which goes against the case of the applicants is that the worked not proved to have worked 240 days in a year and the management had already express his willingness in conciliation proceedings on duty, but the workmen are not join the duty without back wages.

22. Now it is to be decided whether the workman/applicant were ready to joined the duty or not as has been given in the conciliation proceedings that the management was ready to take the applicant on duty but the applicant said that they are ready to go on duty but with back wages and the management had refused to pay them back wages. As the workmen has not completed 240 days of service. The management could say that the management is not ready to accept the workmen in service but the management is taking the plea that they were always ready to accept the applicants in the factory and the management is still ready to accept the applicants as workmen in the factory. I am of the view it is proved that the management never refused to workmen to came and join the duty and the workmen who were refusing to join the duty and for some or other reason. In this way the workmen had been working shows that the workmen are at fault and not the management as proved the statement Ex.W-1 regarding the work done by which of workmen in the industry Shri Anand Singh have worked three days in the first half of the month of January and work twice three days in the second half month. Jai Singh had not worked at all for about 6-7 months and worked for 5 days in the half months and so the

case of regarding of Suresh Kumar on the worked Anand Singh and Mukhtiar Singh had worked but no other workers had worked for the said reason I am of the view that the workmen are not entitled to back wages and I decide this issue as such accordingly.

Issues No. 2 to 4:

23. All the issues are not pressed or argued and hence I decide all these issues against the management.

Issue No. 5 (RELIEF):

24. In view of my findings on the above issues I accept the reference petitions so I direct the management to re-employee all the workmen in the management factory, but the applicants are not entitled to back wages. The workmen are direct to report for duties within four months. However, the parties, are left to bear their own costs. The references are answered and returned accordingly.

P.L. KHANDUJA,

The 26th October, 1994.

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. Ref. 253-87/2735, dated the 28th October, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh.

P.L. KHANDUJA,

Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab./888.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Executive Engineer, HUDA, Karnal *versus* Naib Singh.

IN THE COURT OF SHRI S.R, BANSAL (ADDL. DISST. & SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 566 of 1988

WORKMAN SHRI NAIB SINGH, SON OF SHRI AJMER SINGH, HOUSE NO. 217, MODEL TOWN, AMBALA CITY

AND

THE MANAGEMENT EXECUTIVE ENGINEER, AND HUDA, SECTOR 23, KARNAL

Present :

WR. Shri Jasmer Chand.

MR. Shri J.P. Singh.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called

as the 'Act'), the Governor of Haryana referred the following dispute between the workmann Shri Naib Singh and the management Executive Engineer, HUDA, Sector 13, Karnal to this court for adjudication,--*vide* Haryana Government notification bearing No. 54274--79, dated 5th December, 1988 :--

> Whether the termination of the services of Shri Naib Singh is valid and justified ? If not so, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice dated 11th August, 1988 under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate govt. made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement dated 29th March, 1989 and pleaded that he was employed as Pump Operator by Sub-Divisional Engineer, HUDA, Sector 13, Sub-Division, Karnal (for short called as the 'Management') on 1st April, 1986 on daily wages @ Rs. 22 per day and he worked there till 30th April, 1988 to the entire satisfaction to his superiors and his services were terminated with effect from 1st May, 1988 without showing any just cause. It was also allaged that the management did not submit any written statement before the Conciliation Officer. It is averred that the termination of services of workman is in violation of section 25-F of the Act as he had completed more than 240 days of service in a calander year. It was also alleged that the principle of last cum first go has not been followed. The workman demanded his reinstatement with continuity of service and back wages.

The management admitted the employment of the workman from 1st April, 1986 to 29th April, 1988 with some breaks. The plea however taken is that the services of the workman were never terminated. The workman did not join his duty after 29th April, 1988. He again reported on 30th June, 1988 and his name was entered in TMR No. 98 from 30th June, 1988 but he did not report for duty and his name therefore has to be struck off from the muster roll and the name of Shri Ram Pal was written in order to maintain essential services of the water supply. It is alleged that only two employees who are junior to the workman are working on account of the stay granted by the Hon'ble High Court.

The workman submitted replication controverted the allegations of the management in the written statement filed and reiterating those made in the claim statement. On the rival contention of the parties the following points in issues were laid down for decision :-

(1) Whether the termination of the services of Shri Naib Singh is valid and justified ? If not so to what relief is he entitled ? OPP

(2) Whether the demand notice not filed within the time limit ? OPM

(3) Whether the claim is not maintainable as alleged in preliminary objection of the W.S. ? OPM

(4) Relief.

Parties led evidence. I have heard the representative of the parties. My issuewise findings are as under :-

Issue No. 1

The workman has appeared as WW-1 and supported all the averments of the demand notice/claim statement. He also stated that no notice was given to him nor retrenchment compensation was paid before terminating his services. He further stated that after terminating his services management has employed Kamal Deep, Girdhar Gopal, Rohtas, Shiv Kumar etc. He lastly stated about his unemployment after the termination of the services. The workman denied having gone for duty for 30th June, 1988 and further denied having voluntarily left the job. The management has examined MW-1 Shri A.K. Mangu, Sub-Divisional Engineer, who admitted that the workman worked on daily wages basis from 1st April, 1986 to 29th April, 1988. Although this witness stated that the workman left the job on 29th April, 1988 and came to the office on 30th June, 1988 with a promise to resume his duty with effect from 1st July, 1988 yet on Ex.M-3 copy of the muster roll produced there appears cutting on the name of the workman which shows that the document is not genuine one. Similarly Ex.M-2 copy of the failure report submitted by Conciliation Officer shows that the management did not file any written statement before the said officer resulting in the submission of the failure report. It is admitted by this witness that Girdhar Gopal, Ram Sunehi, Sahib Singh etc. are working but stated that they are working because of the stay order granted by the Hon'ble High Court but the said stay order has not been produced on the file. It is thus apparant that persons who were employed after the workman are still working with the management. It is admitted position on the record that no prior notice was given to the workman nor any retrenchment compensation was paid. The workman has admittedly served more than 240 days in a period preceding twelve months of his termination. The management has failed to produce that the workman has abandoned the job voluntarily. The termination of the services is, therefore, patently illegal and the workman is, therefore, entitled to reinstatement with continuity of service and back period wages.

Issue No. 2

The services of the workman were terminated on 30th April, 1988 and the demand notice was served on 11th August, 1988. Although there is a delay of more than four months but the delay itself is not fatal to the case of the workman. He is, atmost, not entitled to full back wages. I, therefore, hold that inspite of my finding on issue no. 1 that the workman is entitled to back wages, yet having regard to delay in serving the demand notice I hold that he is entitled to only 50% of the back wages. The finding on this issue is, therefore, returned in this manner.

Issue No. 3

The onus to prove on this issue was on the management but the mangement has failed to prove to this issue nor this issue was argued during the arguments. The finding on this issue shall, therefore, stand returned against the management.

Relief :

In the end, the workman is held entitled to reinstatement with continuity of service and back wages to the extent of 50% of the wages.

The reference stands answered accordingly.

Dated 25th October, 1994.

S.R. BANSAL,

Addl. Distt. & Sessions Judge.
Presiding Officer, Labour Court, Ambala.

Endorsement No. 1727, dated the 31st October, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6Lab./890.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of Secretary, HSEB, Chandigarh *versus* Zila Singh.

IN THE COURT OF SHRI S.R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE)
PRESIDING OFFICER, LABOUR COURT, AMBALA.

Ref. No. 96 of 89

between

WORKMAN SHRI ZILA SINGH SON OF SHRI BHAGIRATH RAM,
V. MARU PUR, P.O. JATHLANA, DISTT. KURUKSHETRA

and

THE MANAGEMENT (1) SECRETARY, HARYANA STATE ELECTRICITY BOARD, CHANDIGARH

(2) EXECUTIVE ENGINEER, OPERATION DIVISION,

HARYANA STATE ELECTRICITY BOARD, YAMUNA NAGAR

Present :

WR. Shri Jasbir Singh.

MR. Shri D.R. Batra.

AWARD

In exercise of the powers conferred by clause(C) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short called

as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Zila Singh and the management (1) Secretary, Haryana State Electricity Board, Chandigarh and (2) Executive Engineer, Operation Division, Haryana State Electricity Board, Yumuna Nagar to this court for adjudication,--*vide* Haryana Government notification bearing No. 29982--87, dated 16th June, 1988.

Whether the termination of the services of Shri Zila Singh is valid and justified ? If not so, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice under section 2-A of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate Government made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and made a statement and his demand notice may be treated as his claim statement. He alleged that he was appointed as daily wages worker by the management on 1st July, 1980 and his services were illegally terminated on 10th May, 1984 in violation of mandatory provisions of section 25-F and 25-G of the Act. It was alleged that many juniors were retained and many new persons were recruited. The workman, therefore, demanded his reinstatement with continuity of service and back period wages.

The management in the return filed pleaded that dispute having been raised after a period of four years is barred on account of delay and laches. Moreover the workman filed civil suit and the same was dismissed and the workman was relieved on 15th June, 1984 after the vacation of stay by Sub Judge, Jagadhri. On merits it was pleaded that the workman was retrenched w.e.f. 10th May, 1984 after serving him with one month's notice dated 9th April, 1984 and a sum of Rs. 675 was sent to him through money order being retrenchment compensation which he refused to accept and the same is lying unpaid. Other allegations were denied.

The workman in his replication filed controverted the allegations of the management in the written statement filed and reiterated those made in the claim statement.

On the rival contentions of the parties the following points in issues were laid down for decision :--

(1) Whether the impugned termination of the services of the workman is illegal ? OPW

(2) Whether the reference is not maintainable ? OPM

(3) Whether the reference is bad due to delay and laches ? OPM

(4) Relief.

The parties were permitted to lead avidence by way of affidavits and documents. The workman submitted his own affidavit Ex. W-I and the management filed the affidavit of Executive Engineer, OP Division, H.S.E.B., Yamuna Nagar Ex. M-I and the documents Ex. M-2 to M-9 and Ex. M-11 and Ex. M-12. The workman filed his counter-affidavit Ex. A-2 and Ex M-10 is the counter-affidavit of the management.

I have heard the representatives of the parties. My findings are as under :--

Issue No. 1

The workman in his affidavit has stated that he was retrenched on 10th May, 1984 without any notice or payment of retrenchment compensation but he has stated that he did not received the retrenchment compensation from the office of S.D.O. as per directions given in the notices. On the other hand the management in the affidavit produced has stated that the workman was retrenched on account of shortage of material and paucity of work after serving notice Ex. M-2. and the workman had received the retrenchment notice. Ex. M-3 and Ex. M-4 are copies of retrenchment compensation and postal receipts. Ex. M-5 is the copy of office order dated 31st December, 1985 of surplus staff. Ex. M-6 is the copy of transfer order dated 1st January, 1986. It was further alleged that the retrenchment was effected as per seniority list Ex. M-9. The retrenchment compensation was sent to the workman through money order because the workman did not collect the same from the office of S.D.O. Ex. M-8 is the copy of order dated 31st May, 1984 of Addl. Senior Sub Judge, Jagadhri in which the workman gave an undertaking that in case their stay application is rejected they will not claim the pay for the period after the date of the expiry of the notice of retrenchment. Ex. M-7 is the copy of order dated 15th June, 1984,--*vide* which the stay application moved by the applicant was dismissed. Ex. M-11 is the copy of information sent to the Government regarding retrenchment. The management also alleged that the amount of retrenchment compensation was lying in cash with the cashier. It was held in Ramesh Hydromachs and Labour Court, Hubli and another 1985-LIC-1806 that keeping the amount ready in the office of the employer is sufficient compliance. Similarly it was held by the Hon'ble Supreme Court in Delhi Transport Undertaking and Industrial Tribunal, Delhi and another-1965(1)-LIC-450 that proviso to section 33-(2)(b) of the Act does not mean that the wages should have actually paid because in many cases the employer could only tender the amount before the dismissal but could not force the employee before the dismissal becomes effective. In the instant case the tender was definitely made before the order of retrenchment became effective. No defect whatsoever has been pointed out by the workman in the retrenchment notice. No name of the junior has been disclosed by the workman nor any junior has been produced. It was for him to prove this factum. It is argued on behalf of the workman that the management is an Industrial establishment and three months notices was required to be issued to the workman as well to the Government but the same was not done and therefore the retrenchment is bad. There is however no such pleading in the demand notice. It is not proved on the file that the management is an industrial establishment. Moreover there were only 99 workers working with the management as would indeed become clear from Ex. M-9 the seniority list and retrenchment was effected of the last 28 persons in this seniority list. The workman unsuccessfully agitated the matter upto the Supreme Court of India. He has failed to prove this issue and the finding on this issue is, therefore, returned against the workman and in favour of the management.

Issue No. 2

The onus to prove on this issue was on the management. The management has however failed to prove to this issue. the finding on

this issue, shall, therefore, stand returned against the management and in favour of the workman.

Issue No. 3:

The retrenchment was effected on 10th May, 1984. The demand notice was served in the present case on 4th April, 1988. It was held in Piare Lal, petitioner *versus* Haryana State Electricity Board-1993(1) SCT-104 that delay can be fatal to a claim under section 10 of the Act even if it is held that the termination is bad in law. It was further ruled that the general law providing three years limination is equally applicable to the workman. In the present case the dispute having been raised after a period of four years is bad due to delay and laches. The finding on this issue is, therefore, returned against the workman and in favour of the management.

Relief:

In the end, it is held that the workman is not entitled to any relief.

The reference stands answered accordingly.

The 7th October, 1994.

S.R. BANSAL,
Additional District & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endst. No. 1729, dated the 31st October, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947

S.R. BANSAL,
Additional, District & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

The 22nd November, 1994.

No. 14/13/87-6 Lab./920.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court,

Gurgaon, in respect of the dispute between the workman and the management of M/s. CA, H.S.A.M.B., Panchkula *versus* Ali Mohammed.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR-COURT, GURGAON

Reference No. 589 of 1988

between

SHRI ALI MOHAMMED, S/O SHRI NASRUKHA C/O MAHAVIR TYAGI, ORGANISOR, INTUC, DELHI ROAD, GURGAON

and

THE MANAGEMENT OF (1) CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURAL MARKETING BOARD, 6/6 PANCHKULA, DISTT. AMBALA, (2) ADMINISTRATOR, MARKET COMMITTEE, FEROZEPUR JHIRKA, DISTT. GURGAON.

Pressent :

Shri S.K. Yadav, for the workman.

Shri S.K. Goswami, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947, (in short "the Act"), the Governor of Haryana, referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,-- *vide* Haryana Government Labour Department Endrosement No. 49858--64, dated the 8th November, 1988 :--

Whether the termination of services of Shri Ali Mohammed is just and legal ? If not, to what relief is he entitled ?

2. The facts as contained in the claim statement are that the workman was appointed as a Peon on 17th November, 1983 and his services were illegally terminated on 10th March, 1988 and at the time of termination of the services, he was drawing salary of Rs. 500 p.m. No notice or compensation under Section 25F of the I.D. Act was paid.

3. Upon notice, the management appeared and filed the written statement and took up the plea that the workman was appointed on part time basis, therefore, he was not entitled to seek any remedy as the case did not fall within the meaning of Section 2(s) of the I.D. Act. It was pleaded that the petitioner was appointed as Cattle Scarer on part time basis on a consolidated pay of Rs. 300 p.m. and he worked for three months upto March, 1984 and he was again appointed for three months and this period was extended from time to time and he had never worked in the capacity of a peon.

4. On the pleadings of the parties, following issued were framed on 17th December, 1991 :--

(1) Whether the termination of services of Shri Ali Mohammed is just and legal ? If not, to what relief is he entitled ?

(2) Whether petitioner does not fall under the definition of workman U/S 2(s) of the Act, as he was employed on part time basis ?

(3) Relief.

5. I have heard authorised representatives of the parties and have gone through the evidence available on record. My findings on the issues are as under :--

Issues No. 1 and 2 :

6. I shall be dealing with both the issues all together as they are inter connected. The management has examined Ahmed Khan, Accountant, who brought the record pertaining to the petitioner and deposed that the petitioner was working as a Cattle Scarer on part-time basis on a fixed salary of Rs. 300 and the petitioner had given an application Ex. M1 and order Ex. M2 was passed on the application. He deposed that complaints were received that cattle was creating lot of problems in the Mandi and two persons had already been employed for this job. In addition there to budget had also been demanded but only 20% of the amount had been sanctioned. He gave details of the period, the petitioner had worked and about the break in between. It was stated that since the budget was not sanctioned, therefore, services of the petitioner were no longer required and order Ex. M7 was passed. It was stated that proposal was also sent for appointment of the petitioner as a peon, but since the post was not created, therefore, the petitioner was never appointed as a peon and he had neither worked as a cattle scarer nor as a water carrier during the period.

7. The workman has stepped into witness box as WW1. According to him, he was appointed as peon on 17th November, 1983 and his services were terminated on 10th March, 1988. He has admitted that he had worked as a Waterman and Cattle Scarer and no appointment letter or termination letter was given to him. According to him, there was no break in service.

8. Documents Ex. M1 to Ex. M13 were produced on record by MW1 and a perusal thereof shows that an application was given by the petitioner stating therein that a post of Peon and Chowkidar was lying vacant. A note was given on the application by the management that two persons as Chowkidars were already working but complaints had been received from the Mandi that the cattle was creating lot of problems, the petitioner was then appointed on daily wages and his job was to work in the Shabji Mandi. Application Ex. M2 was given by Brij Lal and a noting thereon by the Executive Officer of the Market Committee shows that the salary was to be paid from the recurring contingencies of class IV employees (part-time) and the cattle scarer was to be paid a fixed sum of Rs. 300 p.m. Ex. M4 is the application moved by the petitioner seeking his appointment and he was appointed for a fixed period of three months and fixed pay of Rs. 300 Ex. M5, Ex. M6 are the officer orders. Ex. M7 specifically refers to the petitioner as part time cattle scarer. The office note on Ex. M11 also shows that the services of the petitioner were engaged as the contingency demanded, on account of the summer season, since the work load had increased. Letter Ex. M12 was written to the Chief Administrator, H.S.A.M. Board, Panchkula, by the Executive Officer-cum-Secretary Marketing Committee

for an additional post of peon and the case of the petitioner was recommended, but since the budget was not given, nor the post was created, ultimately, order was passed bringing an end to the services of the petitioner.

9. Time and again, it has been held by our own Hon'ble High Court that where services are terminated on completion of work and this device is employed to deprive a person of the benefits which may accure to him on account of his long service. It has been the subject matter of enquiry before the various Judicial Forums and the Courts after examining the facts of a particular case at time has found that this device of giving employment for a particular period and again for identical period after a gap of 5-6 days is an unfair labour practice.

10. At the same time, one has also to keep into view the fact whether the termination is meant to exploit an employee or to increase the bargaining power of the employer? In the present case, there is no such evidence on the file which would suggest that the repeated appointments were mere device to deny the petitioner of a regular or permanent status. In fact this plea was never taken in the claim statement. In fact, the office orders suggest that the services were engaged when-ever the situation demanded and the services of the petitioner were engaged from time to time. There is no material on file to show that the petitioner was appointed as a peon but he had been working either as a cattle scarer or a water carrier that too on part time. It was the petitioner, who was to prove that he had been working from 10.00 A.M. to 5.00 P.M. as suggested by him, but no evidence has been produced.

11. **In Ram Lakhan Singh** *versus* **The Presiding Officer, Labour Court, Chandigarh, 1989, SLJ 169,** it has been held by our own High Court that part time workers cannot be considered as employee within the meaning and provisions of Section 25 B of the Industrial Disputes Act, 1947. It was further held that though a part time worker would fall in the definition of "workman" in the strictest sence of Section 2(s) of the I.D. Act, but he could not be considered as employee for the purposes of getting benefits under Section 25F.

12. In this case, the department had recommended the creation of post of peon, but neither the post was created not, the budget was received. The contract of employment in the present case appears to be fair, proper and *bona fide*. It has not been pleaded that repeated appointments were mere device to deny the regular or permanent status, I am of the view that since the petitioner was a part time worker, he cannot be considered to be a "workman" under Section 2(s) of the Act and the termination of services was justified and legal. Both the issues are decided in favour of the management and against the petitioner.

Issue No. 3:

13. As a sequel to the aforesaid findings, it is found that the petitioner is not entitled to any relief, since his case does not fall under the definition of "workman". Reference is answered accordingly.

Dated the 26th October, 1994.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1625, dated the 31st October, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh under section 15 of the Industrial Disputes Actt, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./921.--In pursuence of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Director, Social Welfare Department, Haryana, Chandigarh *versus* Suresh Kumar.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 167 of 1988

between

SURESH KUMAR, S/O SHRI UTTAM CHAND, 808/10-C, KRISHNA COLONY, GURGAON

and

THE MANAGEMENT OF M/S DIRECTOR, SOCIAL WELFARE DEPARTMENT, HARYANA, S.C.O. NO. 68--70, SECTOR 17-A, CHANDIGARH, (2) MANAGER M/S PANJIRI PLANT, RAILWAY ROAD, GURGAON

Present :

Shri P.R. Yadav, for the workman.

Shri O.P. Asiwal, ADA for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (in short "the Act"), the Governor of Haryana, referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,-- *vide* Haryana Government Labour Department Endorsement No. 30542--47, dated the 20th June, 1988 :--

Whether termination of services of Shri Suresh Kumar, Supervisor is legal and justified ? If not, to what relief is he entitled ?

2. The facts in brief are that the petitioner was working as a Supervisor on a monthly salary of Rs. 1,677-25 P. with the management

from 11th April, 1983 and his services were illegally terminated w.e.f. 26th February, 1988. The petitioner has sought his reinstatement with full back wages.

3. The management filed their written statement and took up the plea that the reference was not maintainable as the petitioner was not a workman as defined under Section 2(s) of the Act and he was gainfully employed during the disputed period and by virtue of condition number 2 in the appointment letter, the petitioner could be terminated without notice. It was pleaded that the petitioner was appointed as a Mechanical Supervisor on *ad hoc* basis,--*vide* appointment letter dated 5th April, 1983 and was drawing more than Rs. 1600 p.m. at the time of termination and was not a workman. It was pleaded that on account of negligence of the petitioner, fire broke out in the Panjiri Plant on 29th January, 1988 and explanation was sought which was considered by the competent authority and it was found unsatisfactory and since the petitioner was an *ad hoc* employee, his services were terminated as he was found to be careless and negligent.

4. In the replication, the contents of the written statement were controverted while those of the claim statement were reaffirmed.

5. On the pleadings of the parties, following issues were framed on 24th February, 1989 :--

(1) Whether termination of services of Shri Suresh Kumar, Supervisor is legal and justified ? If not, to what relief is he entitled ?

(2) Whether Shri Suresh Kumar is not a workman as defined under the Act ?

(3) Whether reference is bad as alleged ?

(4) Whether the petitioner has been gainfully employed ? If so, to what effect ?

6. I have heard authorised representatives of the parties and have gone through the evidence on record. My findings on the issues are as under :--

Issues No. 2 and 3 :

7. It was argued on behalf of the management that the reference was bad and the petitioner was not a workman as defined under Section 2(s) of the I.D. Act, 1947 as the workman was drawing wages more than Rs. 1,600 at the time of his termination and this fact has been admitted by the petitioner when he has stepped in the witness box as WW1. Reference was made to the examination-in-chief and it was appointed out that Suresh Kumar had deposed that he was getting Rs. 1,670 p.m. at the time of termination of his services. Appointment letter of the petitioner was produced on record by the workman and is Ex. W2, which shows that the petitioner was appointed as Technical Supervisor. Section 2(s) of the I.D. Act defines "workman" and according to it, would exclude a person who was employed in the managerial or administrative capacity if he draws wages more than Rs. 1,600 p.m.

8. In the present case, the petitioner was employed to do supervisor work, which is neither managerial or in administrative

capacity and he would fall within the definition. The management has failed to lead any evidence to show that his case would fall in any of the exceptions under Section 2(s) of the Act and as such, it is found that the petitioner was a workman and both these issues are decided against the management.

Issues No. 1:

9. The management has examined Shri B.S. Chahal, who deposed that the petitioner was appointed on 11th April, 1983 on *ad hoc* basis and a fire broke out in the Plant on 29th January, 1988 and at that time, the petitioner was on duty and the fire had been caused on account of his negligence and his explanation was called for,--*vide* Ex. M1 and the petitioner had given his explanation Ex. M2 and the report was sent to the Director, Social Welfare Department, Ex. M3 and order of termination was Ex. M4. It was admitted in the cross examination that no enquiry was held and no explanation of the petitioner was sought from 1983 till 1988 except when the fire broke out in the plant. He explained that on 2-3 occasion, oral explanation, of the petitioner had been sought. It was admitted that no notice had been given to the petitioner before his termination.

10. In the present case, the petitioner had no doubt completed 240 days and as per Ex. W1 no actual damage took place and it was only contemplated that damage would have taken place if the fire had not been controlled in time. No charge sheet had been served upon the petitioner. If the department had found that the petitioner had been negligent in his work, they should have ordered an enquiry. The department had simply passed termination order on the explanation put forward by the petitioner and they did not comply with the provisions contained in Section 25F of the I.D. Act, which requires one month's notice in writing or where no notice was given, then pay for the notice period and compensation. This was a case of retrenchment and it was ordered without complying with the provisions of Section 25F and it can safely be held that the retrenchment in this case is void *ab initio*. It is thus found that the termination in this case was illegal and the petitioner is entitled to reinstatement. This issue is decided in favour of the petitioner.

Issue No. 4:

The onus of this issue was upon the management, but they have failed to lead any evidence to show that the petitioner was gainfully employed. Witness examined by the management has not stated a word regarding this and I feel that his bare pleading would not be enough to give a finding in favour of the management. This issue is decided against the management.

In view of my findings on the issues above it is found that the services of the workman had been terminated illegally. Petitioner is entitled to reinstatement with full back wages. Reference is answered accordingly with no order as to costs.

Dated the 24th October, 1994.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1627, dated the 31st October, 1994.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh under Section 15 of the I.D. Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 22nd November, 1994

No. 14/13/87-6Lab/926.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon respect of the dispute between the workman and the management of M/s Chancellor, HAU, Hissar *versus* Roop Chand

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 418 of 1988

between

ROOP CHAND S/O SHRI GHISA RAM C/O GENERAL SECRETARY, MAZDOOR UNION HARYANA, AGRICULTURAL UNIVERSITY, BAWAL, DISTRICT MOHINDERGARH AND THE MANAGEMENT OF M/S CHANCELLOR, HARYANA, AGRICULTURAL UNIVERSITY, HISSAR (2) REGIONAL DIRECTOR, HARYANA AGRICULTURAL UNIVERSITY (AGRICULTURAL FARM) BAWAL, DISTT. MOHINDERGARH

Present :

Shardha Nand for the workman

Shri M.P. Gupta for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, (in short "the Act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,-- *vide* Haryana Government Labour Deptt. endst. No. 34405-11, dated the 31st August, 1987 :--

Whether termination of services of Shri Roop Chand is justified and in order ? If not, to what relief is he entitled ?

2. Briefly put the facts contained in the claim statement are that the petitioner was working as a Helper with the respondent from 1st January, 1982 and was drawing a salary of Rs. 550/- p.m. and his services were illegally terminated on 24th February, 1987. Neither any notice or compensation was given and the petitioner has challenged his termination.

3. The management controverted the pleas raised by the petitioner and it was pleaded that the petitioner had put in only 10 days in the year 1982 and 151 days in 1984 and two days in 1985. It was pleaded that the petitioner was engaged on casual basis for specified programme and was an unskilled labour. It was pleaded that the workman did not work during the year 1986, 1987 and the question of his termination on 24th February, 1987 did not arise. It was pleaded that the workman had raised the demand after two years from the date of termination which had been done with an ulterior motive.

4. In the rejoinder, contents of the written statement have been controverted, while those of the claim statement were reiterated.

5. On the pleadings of the parties, following issue was framed on 3rd June, 1988 :--

Whether termination of services of Shri Roop Chand is justified and in order ? If not, to what relief is he entitled ?

6. I have heard authorised representative of the parties and have gone through the evidence on record. My finding on the issue is as under :--

7. The management has examined Brijvir Singh, who brought the muster roll and proved copies of the muster roll Ex. M1 and deposed that the workman had worked for only six days in the year 1987 and was engaged for the first time on 1st January, 1987 and he had not completed 240 days. It was denied that the petitioner was engaged on 1st January, 1982. It was denied that the petitioner had put in continuous service from 1st January, 1982 to 24th February, 1987.

8. On the other hand, the workman has examined himself as WW1. He deposed that his services were terminated on 24th February, 1987 and he was employed by the management on 1st January, 1982 and he had worked under various schemes and since he had completed 240 days of service, he was entitled to notice and compensation.

9. A close examination of the written statement and the copy of the muster roll would show that they are at a variance. According to the written statement, workman had worked for ten days in the year 1982, but the statement Ex. M1 does not show the working days as ten. According to the written statement, the petitioner had put in 151 days in 1984, but the statement shows the number of working days, as 163. According to the written statement, the petitioner had worked for two days in 1985, but the statement shows that he had worked for 52 days in 1985. The statement made by Brijvir Singh is altogether different. According to him, the petitioner had been engaged for the first time only on 1st January, 1987 and he had worked for six days during the year 1986. It was denied that the petitioner was engaged on 1st January, 1982. The above would show that the management has not come forward with the correct position and they have been changing their stand at every stage. Even if, the copy of the muster roll is considered to be correct, then from March 1984 to March 1985, the petitioner had put in 215 days of service. This period excludes 87 days which the petitioner had put in during the year 1983.

10. No notice or compensation was paid to the petitioner and time and again, it had been held that the Parliament in its wisdom had not provided for the limitation, therefore, the case of the petitioner cannot be

solely thrownout as he had approached the department after a gap of two years.

11. From the evidence, which has come on record, it is evident that there was no complaint against the workman, nor any warning or chargesheet was issued to him during his service. Admittedly, the workman had put in 215 days when his services were terminated without assigning any reason. It appears that the management was alive to the situation that the workman was about to complete 240 days, therefore, the workman could not be removed from his job. The petitioner in this case had been insisting from the very beginning that he was working as Beldar from 1st January, 1982, but it was denied by the management in the written statement and by Brijvir Singh MW1. It had also been denied by MW1 that the petitioner had worked in any of the years prior to 1987, therefore, his statement cannot be accepted as correct and the version put forward by the petitioner is accepted which is corroborated with the statement Ex.M1 placed on the record by the management. It is thus held that the termination in this case is illegal and the petitioner Roop Chand is entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 27th October, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1624, dated the 31st October, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

No. 14/13/87-6Lab./927.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of M/s Eakay (India) Rubber Company Private Ltd., Gurgaon *versus* Naresh Kumar.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 278 of 1988

between

NARESH KUMAR S/O SHRI KANWAL SINGH, 600/18 GANDHI NAGAR, GURGAON AND THE MANAGEMENT OF M/S. ENKAY (INDIA) RUBBER COMPANY PRIVATE LIMITED, BASAI ROAD, GURGAON

Present :

Shri P.S. Rao for the workman.

Shri M.P. Gupta for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (in short

"the act"), the Governor of Haryana referred the following dispute, between the parties, mentioned above, to this Court, for adjudication,--*vide* Haryana Government, Labour Department, endorsement No. 37027-32, dated 10th August, 1988 :-

> Whether services of Naresh Kumar have been terminated or he has left his job by remaining absent on his own ? To what relief is he entitled on the decision of this issue ?

2. The facts as given out in the claim statement are that the petitioner was appointed as a helper with effect from 3rd February, 1987 and his services were illegally terminated on 1st April, 1988 and he was drawing a salary of Rs. 50 .50. Workman through his representative sent a demand notice to the management,--*vide* register letter, dated 1st April, 1988 and one copy was also sent to the Labour Officer, The management as an after thought wrote to the petitioner to join duty and this was done only to create evidence. The demand notice was filed before the Labour-cum-Conciliation Officer and the management though did not want the workman to report for duty, but the workman reported for duty on 10th May, 1988 at 12-00 O'clock and the management misbehaved with him and forced him not to press for reinstatement. The matter was again reported to the Labour Officer and the case was referred to the Deputy Labour Commissioner. The workman was again asked to join his duty on 27th June, 1988 and the management forced him to write on a piece of paper that a new job had been offered to him and he was not prepared to work on the new machine. It was pleaded that the workman had completed 240 days and was unemployed and was entitled to reinstatement with full back wages and continuity of service.

3. In the written statement, it was pleaded that the petitioner had joined as helper and was on probation and he started absenting from duty from 1st April, 1988. The management asked the workman to resume duty *vide* letter 4th April, 1988, 9th April, 1988, 20th April, 1988 but the workman did not turn up and made a complaint to the Labour Inspector and the management had disclosed before the Labour Inspector that the services of the petitioner had not been terminated and they had no objection if the workman came for his duty. It was pleaded that the workman reported for duty on 10th May, 1988 but did not turn up on 11th May, 1988 and registered letter was sent to him on 12th May, 1988 and the workman instead made a complaint to the Labour Inspector.

4. Another notice was received from the Labour-cum-Conciliation Officer and the management appeared and gave it in writing that the services had not been terminated and the workman had refused to work. It was pleaded that the workman could not refuse to work on the other machine and the management had every right to transfer him from one department to the other as per terms of the appointment letter and Certified Standing Orders. It was pleaded that the management was willing to take him back on duty and an offer in this regard was also made in the Court, but the workman did not join the duty and it appears that the workman is not interested in the service at all.

5. In the rejoinder, contents of the written statement were controverted, while those of the claim statement were reiterated. It was pleaded that he was ready to join his duty provided he was paid back wages.

6. On the pleadings of the parties, the following issue was framed on 7th November, 1989 :--

Whether services of Naresh Kumar have been terminated or he has left his job by remaining absent on his own ? To what relief is he entitled on the decision of this issue ?

7. I have heard authorised representative of the parties and have gone through the evidence on record. My finding on the issue framed is as under :-

8. The management has examined O.P. Johri, who deposed that the workman had submitted an application Ex.M1 and on the basis of the application appointment letter Ex.M2 was issued and probation period was extended by letter Ex.M3. He deposed that the workman absented himself with effect from 1st April, 1988 and he had only worked for one day in May, 1988. He stated that they had written letters to the workman to join his duty. He proved letter Ex.M4, postal receipt Ex.M5, Ex.M6 and stated that the letters were received back which were Ex.M7 and Ex.M8. Another letter Ex.M9, Ex.M12 were also written which were received back and a report was also sent to the Labour Inspector regarding the absence of the workman. It was stated that they had received a complaint from the Labour Inspector and wages for the month of March 1988 were paid in the office of the Labour Inspector. It was admitted that Certified Standing Orders were applicable to the management and according to it, if the workman remained absent continuously for eight days, his name could be struck off from the rolls. He clarified that name of the workman was still on the rolls. It was denied that they had forced the workman to sign letter Ex.M25.

9. On the other hand, the workman has stepped into the witness box as WW1. He deposed that he had sent a demand notice Ex.W1 on 1st April, 1988 to the management,--vide registered letter Ex.M2 and another demand notice was made before the Labour Officer and he had reported for duty on 10th May, 1988 but the management misbehaved with him and he had complained to the Labour Officer and the matter was sent to the Deputy Labour Commissioner, Faridabad and he was entitled to full back wages.

10. Ex.M1 is the application which was given by the petitioner, Ex.M2 is the appointment letter, which contains a clause 9(a) which says that the employee could be transferred from one department to the other or from one machine to the other or from one station to the other station. Ex.M4 is the registered letter sent by the management calling upon the petitioner to report for duty. The postal receipt Ex.M5 and Ex.M6 have been placed on record. Both these letters were sent at the address of Gurgaon and native place at Rohtak, but both the envelops were received back. Another notice calling upon the petitioner to join his duty was sent on 9th April, 1988,--vide postal receipt Ex.M10 and Ex.M11. The Labour Officer had sent a letter to the management to appear before him on 21st April, 1988. This letter bears despatch number 342 dated 4th April, 1988. It also shows that it was received by the management on 20th April, 1988. The management had given its reply Ex.M16 on 2nd May, 1988. Ex.M25 is the letter written by the petitioner to the Manager asking him to give him the job which he was earlier doing and that he would not work on the new machine.

11. The stand taken by the petitioner in this case is that he had immediately approached the Labour Officer on 1st April, 1988 and the alleged letter dated 4th April, 1988 Ex.M4, letter dated 9th April, 1988 Ex.M9 were an after though and had been issued solely as a cover up. On the other hand, it has been pointed out that when the petitioner did not report for duty from 1st April, 1988 onwards, it had sent registered letter to the petitioner at his native place at Rohtak and the local address given by him in his application Ex.M1, but both these letters were received back and the zimni order on the file would show that the petitioner never intended to join the duty though repeatedly, the management had been offering him to join the duty. It was pointed out that the petitioner had joined his duty on 10th May, 1988, but he did not turn up on 11th May, 1988 and the offer was again made before the Deputy Labour Commissioner and then in the Labour Court, but the workman could not make up his mind and stated before the Court on 10th April, 1989 that he would consult his representative and would then submit whether he was ready to join the duty or not. Even after 2-3 adjournments, the workman did not express his desire to join duty and insisted that the entire back wages should be paid first and only then he would join. Since the settlement could not be arrived at, case was adjourned thereafter for evidence.

10. No doubt, there is a specific clause in the appointment letter that the petitioner could be transferred from one department to the other, from one machine to the other and he could not have refuse to work on the other machine. Except, for a bare statement, the petitioner has been unable to prove his contention that he was forced to write his letter Ex.M25. No doubt that the petitioner had approached the Labour Officer on 1st April, 1988 but he did not express his willingness any where either in the Labour Court or before the Deputy Labour Commissioner that he was ready to join there and then and the matter regarding back wages could have been decided later. The management on their part had written letter to the petitioner to join the duty and they had made a statement that they were ready if the petitioner was ready to join his duty provided he did not lay down any condition as had been done by him earlier.

11. The plea taken by the petitioner in the claim statement is that the letter dated 4th April, 1988 and 9th April, 1988 was an after thought and had not been proved. There is no evidence on the file to show that the management had received copy of the demand notice on 1st April, 1988.

12. There is no evidence on behalf of the management to establish any mis-conduct on the part of the petitioner and they are also ready to take him back if the petitioner was ready to join his duty. In this eventually, it would fit, fair and proper to order reinstatement of the petitioner, but I am of the view that he is not entitled to back wages on the principles of "No pay for no work". As proceedings before the Labour Officer, Deputy Labour Commissioner and before this Court clearly show that the petitoner did not want to join till his entire matter was decided. I am of the view that the person should not be entitled to any pay and allowances for the period for which he did not perform the duty, although he was given an opportunity at the earliest. Reference may also be made to an authority of our own High Court reported as Kishan Singh *versus* State of Punjab 1990 (I) SLR page 801.

13. As a sequel of the above, it is found that the petitioner is ordered to be reinstated but he is not entitled to any back wages. Reference is answered accordingly with no order as to costs.

ANITA CHAUDHARY,

The 27th October, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1628, dated the 31st October, 1994

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh under Section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 6th December, 1994

No. 14/13/87-6 Lab./936.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of Director Principal, Medical College, Rohtak *vs.* Shri Om Parkash :--

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 17 of 1992

Between

SHRI OM PARKASH S/O SHRI MUNSHI RAM C/O SHRI HANS RAJ VATS, GALI DAKKHANNA, ROHTAK

and

THE MANAGEMENT OF M/S DIRECTOR PRINCIPAL, MEDICAL COLLEGE, ROHTAK

Present :

Shri H.R. Vats, A.R. for the workman.

Shri S.C. Verma, A.D.A. for the management.

AWARD

In excercise of powers conferred by Sub Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of

Haryana has referred the following dispute, between the parties, named above to this Court for adjudication,--*vide* Labour Department No. SOV/Roh/135-91/5965--69 dated 24th January, 1992 :--

Whether the termination of services of Shri Om Parkash is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he was appointed as Sweeper in Orthopadic Department of Medical College and Hospital, Rohtak and his service record was good and unblemished throughout. The workman was terminated on 1st April, 1988 illegally, which was challenged by him before this Court and he was reinstated by passing an award dated 7th June, 1990 and he was allowed to join his duties on 21st September, 1990, but he was not allowed to join in the same department but he was illegally asked to join in Welfare Department (Handicapped) which was against the natural justice. Now the workman has again been terminated on 1st March, 1991 without giving any reason which amount to retrenchment under Section 2(oo) of I.D. Act and he was not given one notice, notice pay or retrenchment compensation and hence the order of termination is illegal and null and void and liable to be set aside. Hence this claim petition was filed.

3. The management appeared and filed the written statement that the applicant has no cause of action to file the present claim statement; this Court has got no jurisdiction to try and decide the present claim statement as the institution of the respondent does not come within the definition of 'industry' as define in the I.D. Act, 1947; claim statement is bad for non-joinder of necessary parties; the applicant has no *locus standi* to file the present claim statement and the claim statement is not maintainable in the present form. The applicant was appointed under Temporary Scheme i.e. District Handicapped Welfare Centre Scheme which was sponsored by the Social Welfare Department, Haryana. The respondent received grant-in-aid from the Director Social Welfare, Haryana and for this purpose, the applicant was given appointment by the respondent purely on temporary basis for a period of three months through Employment Exchange and the applicant joined as such on the post of Sweeper-cum-Chowkidar on 15th December, 1986. The applicant was reinstated in view of the Award dated 7th June, 1990 passed by this Court. The respondent has not received any grant-in-aid from the Director Social Welfare Department for the payment of salary of the applicant after 28th February, 1991, therefore, the applicant was not allowed to retain in service for the purpose of implementation of above said scheme as the salary of the applicant was to be paid out of grant in aid received from the Director, Social Welfare Department Haryana. The applicant was relieved from his duty with effect from 28th February, 1991 ,--*vide* letter dated 28th February, 1991. The provision of Section 25-F have not been violated and claim-statement is liable to be dismissed.

4. The replication was filed by the workman. On the pleadings of the parties, the following issues were framed :--

1. As per terms of reference ?
2. Whether the workman has no cause of action ?
3. Whether the claim statement is bad for non-joinder of necessary parties ?

4. Whether the workman has no *locus standi* ?

5. Whether the respondent is not an 'industry' ?

6. Relief ?

5. My findings on the above issues with reasons thereof are as under :--

Issue No. 1

6. The workman has come into witness-box as WW-1 and closed the evidence. The management has examined Shri Manohar Lal Assistant as MW-1 and evidence thereafter was closed.

7. The learned A.D.A. for the management made submission that as it was for the applicant to prove that he had served for about 240 days in a year which he is failing. On the other hand the learned A.R. for the workman Mr. Vats brought to my notice the claim-statement made by the workman that he was previously terminated and he had to go to this Court and he was allowed to join his duties on 21st September, 1990. The written statement of the respondent is the admission of the above para of the workman, admitting that he was reinstated in view of the award dated 7th June, 1990 thus it is provided that the workman who had already worked in the department and he was appointed on the orders of this Court in the year 1990. Thus I admitted the plea of the workman that he had served the department for more than 240 days in a year as he made statement that he was appointed on 25th October, 1984 and he was removed from the job on 1st March, 1991 without any break. The cross-examination of the workman is that wherein he admitted the suggestion that he was removed from the job from 28th February, 1991. In view of the admission made by the respondent by way of examination of the workman statement of the applicant that he had served the department for more than 240 days.

8. The submission of the learned A.D.A. for the management is that salary of the applicant has been paid from grant-in-aid but when the management had not received the grant-in-aid, the management was compelled to bring an end to the services of the workman. Shri Manohar Lal Khurana as MW-1 made statement that applicant was appointed as Sweeper-cum-Chowkidar in the Handicapped Kalyan Kender. As the grant was not received he was removed from the job copy of which is Ex. M-3. He had joined the duty after passing of the award thereafter he was again removed from the job as there was no fund with the management.

9. The question is whether there is the post of Chowkidar in the respondent department or not. I know that the Medical College is a large establishment and there is must be more than one Chowkidar. The Chowkidars must be getting pay from Medical College and not from the funds as alleged by the respondent.

10. The view of the above evidence I am of the view that the workman had completed more than 240 days of services and it is wrong to take the plea for non-availability of fund, the job of the workman as Chowkidar were brought to an end. Thus I am of the view that the reference is liable to be accepted and I decide this issue in favour of the workman.

Issues No. 2 to 5:

11. All these issues are not pressed or argued by the parties. Hence I decide all these issues against the management.

Issue No. 6 (Relief):

12. In view of my findings on the above issues I accept the reference petition of the workman and direct that the workman is liable to be reinstatement with continuity of service but with 50% (FIFTY) of back wages. The reference is answered and returned accordingly, however the parties are left to bear their own costs.

The 9th November, 1994.

P.L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endorsement No. ref. 17-92/2843, dated the 11th November, 1994.

Forwarded (four copies), to the Secretary to Government of Haryana, Labour and Employment Department, Chandigarh.

P.L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

The 29th November, 1994

No. 14/13/87-6 Lab./941.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-Cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/S Sewak Sabha Charitable Trust Hospital, Hisar *versus* Smt. Sheela Devi :--

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 91 of 90

SHRIMATI SHEELA DEVI, W/O SHRI MANGE RAM,
BHARAT NAGAR, 12 QUARTER, HISAR

Versus

SEWAK SABHA CHARITABLE TRUST HOSPITAL, HISAR

Present :

Shri J.C. Anand, for the workman.

Shri B.D. Mehta, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the

Act'), the Governor of Haryana referred the following dispute between Smt. Sheela Devi and the above mentioned management for adjudication to this Court vide Labour Department No. Hsr/151--89/29099--29105, dated 5th July, 1989 :--

Whether termination of services of Smt. Sheela Devi is justified and in order ? If not, to what relief is she entitled ?

2. According to the workman, she was appointed as Sweepress under the management in 1981 and though she was served with a charge sheet, but her services were terminated on 13th January, 1989 without holding any enquiry and without affording her any opportunity to defend herself. It is claimed by her that termination of her services was affected without complying with the provisions of Section 25-F of the Act. She, therefore, prayed for reinstateement with full back wages and other benefits.

3. In the reply filed by the management, it was pleaded that a proper and fair domestic enquiry was conducted and only thereafter the services of the workman were terminated. It was, therefore, stated that the provisions of Section 25-F of the Act, were not attracted in this case. The management further claimed that the workman did not cooperate in the enquiry proceedings. Several preliminary objections were also raised by the management, as they are reflected in the following issues, framed on 10th May, 1990 by my learned prodecessor :--

(1) As per reference.

(2) Whether the respondent management is not covered by the definition of industry ? If so, to what effect ?

(3) Whether the management held a proper and just enquiry ? If so, to what effect ?

(4) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri J.C. Anand, A.R. of the workman and Shri B.D. Mehta, A.R. of the management and have gone through the case file. My findings on the above issues are as under :--

Issue No. 3:

5. Before discussing other issues, it would be desireable to decide this issue first of all, because findings on this issue, will have a bearing on issue No. 1.

6. The workman appeared as WW-1 and she stated that she had given reply to the charge sheet served upon her. She, however, stated that no enquiry was conducted against her and she was not afforded any opportunity to defend herself.

7. The management, on the other hand, tendered in evidence documents Ex. M-1 to Ex. M-22 and closed their case.

8. A perusal of Ex. M-2 would show that this was copy of charge sheet served upon the workman. The receipt of the charge sheet is admitted by the workman herself. Thereafter, the management appointed Dr. Ramesh

Jain as Enquiry Officer and the Enquiry Officer issued notice to the workman --*vide* notice dated 23rd July, 1988 (Ex. M-4) to appear before him on 30th July, 1988 at 10.00 A.M. in the office of the Administrator in new building of the hospital and a perusal of Ex. M-4 would show that this notice was received by the workman on 25th July, 1988 and it was attested by a witness named Ramu. The Enquiry Officer also summoned 5 witnesses for 30th July, 1988 as in evident from copies of summons Ex. M-5 and when we peruse the order sheet dated 30th July, 1988 (Ex.M-9), it would be manifest that Sheela Devi did not appear before the Enquiry Officer, though the Enquiry Officer kept the case in waiting till 12.00 noon on that date and it was thereafter that the Enquiry Officer proceded to record evidence *ex parte* Ex. M-18 to Ex. M-21 are the copies of the statements of witnesses produced by the management before the Enquiry Officer. After the receipt of the Enquiry report, the order of termination dated 13th January, 1989 (Ex. M-13) thereby terminating the services of the workman, was issued.

9. From the above discussion, it would be evident that the workman was duly informed by the Enquiry Officer through notice dated 23rd July, 1988 (Ex. M-4) and as she was served personally and as she did not appear on the date fixed by the Enquiry Officer, she was rightly proceded against *ex parte* The Enquiry Officer was, therefore, justified in recording evidence *ex parte* against the workman and it, therefore, can not be said that the domestic enquiry conducted against the workman was not just and fair.

10. During arguments, Shri J.C. Anand, A.R. of the workman pointed out that alongwith the charge sheet, list of witnesses was not appended as was evident from the contents of Ex. M-2 and as such, there was violation of principle of natural justice. I am afraid, I am not in agreement with this line of argument of Shri J.C. Anand, A.R. of the workman, because it is evident that even the workman failed to submit any reply to the charge sheet and although the workman had claimed that she had furnished reply to the charge sheet, but on her own admission, she was not possessed with a copy thereof. Moreover, it has neither been stated in the damand notice, nor in the claim statement that she was prejudiced on account of non supply of list of witnesses. As the workman did not participate in the enquiry despite due notice to her, the failure of the management to supply list of witnesses to her alongwith charge sheet, cannot be said to have prejudiced her defence and this argument of Shri J.C. Anand A.R. of the workman, is hereby negatived. Similarly, other objection of Shri J.C. Anand, A.R. of the workman that the Enquiry Officer was not examined before this Court, thus, causing prejudice to the workman, has to be rejected, because the copies of documents Ex. M-1 to Ex. M-22 were allowed to be tendered in evidence without any objection what-so-ever from the workman.

11. In the light of the discussion above, I hold that a just and proper domestic enquiry was conducted by the management before terminating the services of the workman and accordingly, I answer this issue in favour of the management.

Issue No. 1:

12. Since the services of the workman were terminated after holding a just and proper enquiry, the termination of services of the workman cannot be said fall within the ambit of "retrenchment" as defined in Section 2(oo) of the Act and as such, the provisions of Section 25-F of

the Act are not attracted in this case. The termination of services of the workman was, therefore, justified and in order and the workman is not entitled to any relief. This issue is, therefore, answered against the workman.

Issue No. 2:

13. This issue was not pressed by the A.R. of the management and was conceded to by him during arguments. This issue is, therefore, answered against the management.

Issue No. 4-Relief:

14. In view of my findings on the above issues, the termination of services of the workman is held justified and in order and she is not entitled to any relief in this case. The reference is answered accordingly, with no order as to costs.

The 2nd November, 1994.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2334, dated the 7th November, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

No. 14/13/87-6Lab/942.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Sewak Sabha Cheritable Trust Hospital, Hisar *versus* Smt. Janki Devi.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 298 of 90

.. Date of receipt : 20-10-89

.. Date of decision : 2-11-94

SMT. JANKI DEVI, L.R. AND WIFE OF DECEASED SHRI SATYA PAL SHARMA, HOUSE NO. 303, DEFENCE COLONY, HISAR .. Applicant

versus

SEWAK SABHA CHARITABLE TRUST HOSPITAL, HISAR .. Respondent-Management

Present :

Shri T.C. Gupta, for the workman.

Shri B.D Mehta, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short,

the Act) the Governor of Haryana referred the following dispute between Satya Pal and the above mentioned management for adjudication to this Court,—vide Labour Department letter No. HSR/253-89/43510--15, dated the 16th October, 1989 :--

Whether termination of services of Satya Pal Sharma is justified and in order ? If not, to what relief is he entitled ?

2. According to Satya Pal Sharma, he was appointed as clerk by the management on 1st January, 1982 and he worked as such upto 30th June, 1989, on which date his services were terminated without giving him any notice and without paying him any retrenchment compensation. According to the workman the termination of his services amounted to "retrenchment" as defined in section 2(oo) of the Act and as the provisions of sections 25-F and 25-G of the Act were not complied with, the same was illegal. The applicant prayed for reinstatement with full back wages and other benefits.

3. During the pendency of this reference, Satya Pal Sharma died on 1st December, 1991 and his Legal Representatives were brought on record,—*vide* order dated 12th March, 1992.

4. The management in its written statement, contended that the applicant was appointed as Administrator and not a clerk and as he was employed in supervisory capacity and as his functions were mainly of managerial nature, he was not a workman. The management further pleaded that as per terms of his appointment letter, the applicant was entitled to one month's salary and the same had been paid to him. According to the management, the applicant embezzled and mis-appropriated a sum of Rs. 3,841 and a further sum of Rs. 325 as detailed in para 4 of the written statement. An objection was also taken that the applicant had crossed the age of 60 years and as such, there was no termination in the eyes of law. It was also pleaded that the respondent management was not an "industry", as defined in the Act.

5. On the pleadings of the parties, the following issues were framed by my learned predecessor,—*vide* order dated 16th July, 1990 and 23rd April, 1991 :--

(1) As per reference.

(2) Whether the respondent is not an industry and the workman is not covered by the definition of workman ? If so, to what effect ?

(3) Whether the workman has crossed the age of 60 years ?

(3-A) Whether the workman embezzled the amounts mentioned in the written statement ? If so, to what effect ?

(4) Relief.

6. The parties led evidence in support of their rival claims. I have heard Shri Bhagwat Dayal, A.R. of the workman and Shri B.D. Mehta, A.R. of the management and have gone through the case file. My findings on the above issues are as under :--

Issue No. 1 & 3 :

7. Both these issues were interconnected and as such, are being taken up together for purposes of facility.

8. The workman had pleaded in his claim statement that he was appointed on 1st January, 1982 and although the management in its written statement has pleaded that the date of appointment had been wrongly given in the claim statement, but it is to be noted that the management did not specifically give the date of initial appointment of the applicant. On the other hand, in the written statement, the applicant was alleged to have embezzled some amount from 2nd November, 1988 onwards. Be that, as it may be, as the pleading contained in the claim statement regarding date of initial appointment is not specifically denied by the management, it stands established that the applicant had worked from 1st January, 1982 to 30th June, 1989, on which date, he was relieved in pursuance of the termination order dated 27th/29th June, 1989 (Ex. W-1). When this termination order Ex. W-1 is perused, it would be manifest that this termination order was issued on 29th June, 1989 and the workman was relieved on 30th June, 1989. There is no material on the file to show that one month's salary was paid to the workman in lieu of notice, as claimed in the written statement and admittedly, no retrenchment compensation was paid to him. The termination of services of Satya Pal Sharma, now deceased, is, therefore, illegal for want of compliance of provisions of section 25-F of the Act and it has to be held that the termination order was illegal.

9. The management has raised a plea that the deceased has crossed the age of 60 years and as such, the impugned order was in fact no termination as envisaged in the Act. To butress this view, Shri B.D. Mehta, A.R. of the management referred to the photostat copy of the proceedings of the meeting of Managing Committee of the Trust, held on 16th December, 1990, whereby the retirement age of clerks was fixed 55 years, which could be extended upto 60 years at the maximum. However, the management has failed to produce any standing order of trust, approved by competent authority, fixing the age of superannuation of workman and though the management has alluded to the appointment letter of the workman, but the same has not been adduced in evidence. In the absence of appointment letter, it cannot be said that the said letter contained any stipulation fixing the age of retirement of the workman. The impugned order dated 29th June, 1989 is an order of termination simplicator and cannot be termed as an order of superannuation. This argument of Shri B.D. Mehta, A.R. of the management is hereby rejected.

10. In the light of discussion above, I hold that the termination of services of the workman was illegal and that it was not a case of attaining the age of superannuation by the workman. The termination of services of the workman is, therefore, illegal and since the workman had already died, the relief of reinstatement is not possible. The L.Rs of the deceased would be entitled to full back wages with effect from 1st July, 1989 to 30th November, 1991, the date of death and they shall also be entitled to consequential benefits, if any. Both these issues are answered accordingly.

Issue No. 2:

11. The appointment letter of the workman, an already discussed, has not been placed on file and a perusal of the termination order Ex. W-1, would show that Satya Pal deceased, was shown as retired clerk. There is nothing on the file to show the duties of the deceased and it can not, therefore, be said that the duties of the deceased were of supervisory nature only. Likewise, there is no evidence on the file to show that the management was not an industry, as defined in the Act.

12. In the absence of any evidence, I have no hesitation in answering this issue against the management.

Issue No. 3-A:

13. Sh. Bishan Sarup, MW-1 has deposed that the deceased had embezzled the amount, as shown in Ex. M-1 and Ex. M-2 and that the deceased had also deposited of Rs. 3,841 on 21st December, 1990. A perusal of Ex. M-1 and Ex. M-2 would show that after the termination of the deceased Satya Pal had deposited the amount of Rs. 3,841 being the difference in the receipts maintained by the management and the Civil Surgeon office, Hisar. This alleged embezzlement came to notice of the management only after the services of the workman were terminated on 30th June, 1989. As such, this post-termination detection of embezzlement is not relevant for the decision of the reference in question. The issue is, therefore, decided accordingly.

Issue No. 4--Relief:

14. In view of my findings on the above issues, the termination of services of the workman is held illegal. The same is hereby set aside. As the applicant has died, his reinstatement cannot be ordered. The Legal Representatives of the deceased Satya Pal Sharma shall be entitled to full back wages for the period from 1st July, 1989 to 30th November, 1991, the date of death of Satya Pal with consequential benefits, if any. The reference is answered accordingly, with no order as to costs.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

The 2nd November, 1994.

Endorsement No. 2329, dated the 7th November, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6Lab./948.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Haryana Cancast

Ltd., P.O. Satrod, District Hisar *versus* Workmen/Gen. Secy. Hr. Polysteel Workers Union.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT. HISAR

Reference No. 2 of 90

Date of receipt : 13th May, 1988.

Date of decision : 2nd November, 1994

WORKMEN/GENERAL SECRETARY HARYANA POLYSTEEL WORKERS UNION, NAGORI GATE, HISAR

versus

M/S HARYANA CANCAST LTD., P.O. SATROD, DISTT. HISAR

Present :

Shri Darshan Singh for the Union, applicant.

Shri M.M. Kaushal for the management.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, the Act), the Governor of Haryana referred the following disputes between workers and the above mentioned management for adjudication to this Tribunal,—*vide* Labour Department letter No. 18152--56, dated 2nd May, 1988 :--

(1) Whether the workers of the factory are entitled to wages for the period from 19th May, 1986 to 24th July, 1986, during which period the management suspended manufacturing process ? If yes, to what amount ?

(2) Whether the termination of services of 19 workers shown in the enclosed list, is justified and in order ? If not, to what relief are they entitled ?

2. The reference was made on the demand notice having been raised by Haryana Polysteel Workers Union and Haryana Concast Workers Union, Hisar (hereinafter referred to as 'Union') and as per the claim statement filed by the Union, the management with *mala fide* intention, filed a civil suit in the Civil Court at Hisar and obtained stay order, restraining the employees from observing slow down, demonstrations, strike, gate meetings etc. and the management taking undue advantage of the said stay order, did not allow the employees to enter the premises of the management. The management illegally suspended the manufacturing process from 19th May, 1986 arbitrarily and without any reason and this unilateral closure of business remained upto 24th July, 1986. The management in-between dismissed 19 employees with effect from 16th May, 1986, without holding any domestic enquiry against them, although they had already been served charge sheets and according to the Union, the dismissal order of these 19 employees are illegal, unjustified and against the principles of natural justice. The management, however,—*vide* its decision dated 19th September, 1986, took back these employees on duty, without any decision regarding their wages for the intervening period. According to the Union, any undertaking taken from these employees was not tenable under law and they are entitled to full wages for the intervening period.

3. The management, in its lengthy written statement, stated that despite settlements dated 15th April, 1985 and 14th November, 1985, the employees resorted to "go slow" and other deliberate acts of violance. It was further alleged that they resorted to acts of sabotage and indiscipline inside the factory premises and at the factory gate, thereby restraining the supervisory staff and officers from executing their day-to-day activities and they also indulging in creating hinderances upon the willing workers. It was also stated that the workers did not perform their work causing huge losses to production and damages to the raw material and the property of the company. It was under these circumstances that the management was forced to suspend manufacturing process. While admitting that 19 employees were dismissed without holding any enquiry, the management stated that since these employees were guilty of serious and grave misconduct, it was not possible to conduct enquiry against them on account of the prevailing circumstances created by the Union. According to the management, these 19 employees were lateron taken back on duty from time to time after the workers gave assurance that they will not repeat such acts in future and that the order of reinstatement passed by the management, stating that they will not be entiled to wages for the interveneing period, was duly accepted by the workers. The management further pleaded that manufacturing activities were resumed on 24th July, 1986. It was also stated that demand No. 2 has become infructuous. Several preliminary objections were also raised, as they are reflected in the following issues, framed on 5th May, 1989 by the then Presiding Officer, Industrial Tribunal, Rohtak :--

(1) Whether the applicants are entitled for pay etc. from 19th May, 1986 to 24th July, 1986 ?

(2) Whether the termination of services of 19 workmen, whose names have been given in the reference, is not correct ? If so, to what effect ?

(3) Whether teh reference is bad in law as alleged in preliminary objection No. 1 of the written statement ?

(4) Whether the demand No. 2 has become infructuous, as alleged ?

(5) Whether the demand No. 1 of the workers does not come within the definition of Industrial Disputes Act, 1947 ? If so, to what effect ?

(6) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri Darshan Singh, A.R. of the Union and Shri M.M. Kaushal, A.R. of the management and have gone through the case file carefully. My findings on the above issues are as under :--

Issue No. 1 :

5. The management in this case has examined S/Shri S.P. Mittal, I.A.S. (retired). MW-1, Rajinder Singh, clerk office of Labour Commissioner, Haryana, Chandigarh MW-2, A.K. Sharma, General Manager, Works MW-3 and S.S. Kobra, Personnel Manager, MW-4 and has led in evidence a large number of documents. While the testimony of Shri S.P. Mittal, MW-1 has a bearing on the manner, the dismissed 19 employees

were taken back on duty. Rajinder Singh, MW-2 has proved the correspondence which took place between the management and the Labour Department from time to time regarding the "go slow" and other activities indulged in by the employees. Shri A.K. Sharma, G.M. Works, MW-3 was examined in order to prove that there was loss of production due to the non-cooperation of the employees and Sh. S.S. Kobra, MW-4, who was not in service of the management, at the relevant time, had testified various documents viz. Ex. MW-4/1 to Ex. MW-4/124.

6. A persual of Ex.MW-4/80 would show that,-*vide* this order dated 19th May, 1986, the management suspended the manufacturing process with immediate effect and though the management had led voluminious documents on the file to prove the back ground under which the management was forced to do so, and while it was argued by Shri M.M. Kaushal, A.R. of the management that the suspension of manufacturing process, as ordered by the management on 19th May, 1986, was forced on the management by the go slow and other illegal activities indulging is by the workers since 11th April, 1986, it has to be seen whether this order, suspending manufacturing process with immediate effect, amounts to "lockout" as defined in Section 2(e) of the Act. Lock-out is defined under Section 2(e) of the Act, as under :--

> "Lock-out" means the temporary closing of a place of employment of the suspension of work or the refusal by an employer to continue to employee any number of persons employed by him.

7. Shri M.M. Kaushal, A.R. of the management drew my attention to the letter dated 15th May, 1986, sent by the Labour Commissioner, Haryana to the Union. When we peruse this letter, it would be seen that on the basis of the information given by the management that the workers have resorted to go slow activities, the Labour Commissioner, Haryana, pointed out to the Union that it amounted to unfair labour practice and that, action could be initiated under Section 25-U of the Act and advised the Union not to resort to such activities like go slow etc. A perusal of this letter would show that this advice was issued by the Labour Commissioner to the Union on the basis of unilateral representation made by the management and before issuing this letter, the Union was not heard. Such a letter therefore, has no legal entity under law.

8. According to Section 22(2) of the Act, the lock-out can not be ordered by an employer without given notice thereof, as mentioned in the 4 clauses thereof and according to Section 24 of the Act, a lock-out is illegal, if it is declared in contravention of Section 22 or for that matter Section 23 of the Act.

9. Now coming to the moot question whether the order dated 19th May, 1986 (Ex.MW-4/80) suspending manufacturing process with immediate effect, amounts to "lock-out" as defined in the Act, or not. Shri M.M. Kaushal, A.R. of the management argued hotly that this order passed with the avowed object of preventing violence and threat to life and property, was justified on facts and it, therefore, was not a "lock-out" as defined in the Act. In support of his contention, he banked upon the observations made by Bombay High Court in the authority reported as MAFATLAL ENGINEERING INDUSTRIES LTD. *versus* ASSOCIATION OF ENGINEERING WORKERS AND ANOTHER, 1983-II, LLN-82.

10. The authority of MAFATLAL ENGINEERING INDUSTRIES LTD. (SUPRA) dealt with the provisions of Maharastra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. Moreover, in this case, notice was issued by the management, declaring its intention to effect a lock-out and thereafter, the Union filed a complaint against the company and sought interim relief. Since this authority is not under the Industrial Disputes Act and since this authority is based on different facts, the same is not helpful to the management. As per the definition of lock-out given in the Act, temporary closure of a place of employment or the suspension of work, amounts to "lock-out". In the instant case, the management has temporarily suspended manufacturing process and there can be no doubt that the order dated 19th May, 1986 amounted to "lock-out" as defined in the Act and as admittedly, the lock-out was not declared after complying with the provisions of Section 22 of the Act, the same is illegal. Once it is held that the impugned order dated 19th May, 1986 amounted to lock-out and that too illegal, the workers of the company are entitled to wages for the period from 19th May, 1986 to 24th July, 1986, when the manufacturing process was resumed. I, therefore, answer this issue in favour of the Union.

Issue Nos. 2 & 4:

11. Both these issues are interconnected and as such, are being taken up together for purposes of facility.

12. It is admitted case that 19 workers, as shown in the list appended with the reference, were dismissed from service by the management,--*vide* order dated 16th May, 1986 and it has also come in evidence that these employees were taken back in service in consequence of the decision taken in the meeting of Review Committee, held on 10th September, 1986. The management, at the time of taking them back decided that the workers would not be allowed back wages for the intervening period. Admittedly, no domestic enquiry was conducted before dismissing 19 employees. Ex.W-14 is a specimen of one dismissal order relating to Jaibir employee, while Ex. W-16 is the letter dated 4th October, 1986, issued to Jaibir, informing him about his reinstatement with continuity of service, but it was stated therein that he will not be entitled to wages from the date of dismissal till the date of joining. The management has adduced in evidence, the joining reports of the employees as Ex.M-4 to Ex.M-16 and their perusal would show that these dismissed employees had reported their arrivals on different dates given there in consequence of the letters sent by the company to them. These joining reports Ex.M-4 to Ex.M-16 are identically drafted and it is not specifically mentioned therein that the employees had accepted their terms and conditions set out in the letters of the company referred to therein.

13. Admittedly, these 19 employees were dismissed from service without holding any domestic enquiry and in my opinion, the dismissal of services of 19 employees had resulted in their "retrenchment" as defined in Section 2(oo) of the Act and since the provisions of Section 25-F of the Act were not complied with, their dismissal is null and void. Once, it is held that the dismissal of 19 employees were null and void, they are obviously, entitled to wages for the period they remained out of job and unless these employees had specifically accepted the terms and conditions set out in the company's letters, specimen of which is Ex.W-16, the mere reference thereof in their joining reports, is of no consequence.

14. The matter can be examined from different angle also. These 19 were dismissed from service on 16th May, 1986 and since their dismissal is held to be null and void, they are automatically entitled to wages for the peiod from 19th June, 1986 to 24th July, 1986, during which period manufacturing process was suspended and the same has already been held by me to amount to illegal "lock-out".

15. The authority of BANK OF INDIA versus T.S. KELAWALA & OTHERS (SC) 1990-LLR-313, referred to by Shri M.M. Kaushal, A.R. of the management is not helpful to the management, because there was no legal strike by the workers in our case and on the other hand, the management resorted to illegal lock-out, as discussed above.

16. In the light of discussion above, I hold that the dismissal of 19 employees, shown in the list, was illegal and since they had already been taken back on job, their reinstatement is not called for and they will be entitled to wages for the intervening period. Both these issues are, therefore, decided in favour of the Union.

Issue No. 3 & 5 :

17. Both these issues were not pressed by the A.R. of the management and were conceded to by him during arguments. Both these issues are, therefore, answered against the management.

Issue No. 6--Relief :

18. In view of my findings on the above issues, the workers of the factory are entitled to full wages for the period from 19th May, 1986 to 24th July, 1986 and the dismissal of 19 employees, shown in the list appended to the reference is held illegal and they are entitled to full wages for the period from the date of dismissal, till the dates of their joining. The management is, therefore, directed to pay the wages to the workers, as discussed above, within a period of three months from today, failing which the workers shall be entitled to interest at the rate of 12% per annum from the date of this award, till the date of actual payment. The reference is answered according with no order as to costs.

B.R. VOHRA,

Dated the 2nd November, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 2361, dated the 7th November, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh for necessary action.

B.R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.